

CONTRACT No. _____

STATE OF NEW MEXICO
ADMINISTRATIVE OFFICE OF THE COURTS
MODEL PROFESSIONAL SERVICES CONTRACT
GUARDIAN AD LITEM/ YOUTH ATTORNEY/ RESPONDENT ATTORNEY

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the State of New Mexico, the Administrative Office of the Courts, hereinafter referred to as the AOC, and «Contractor», hereinafter referred to as the Contractor.

Contractor Address: «Contractor_Address_1»
 «Contractor_Address_2»
Phone Number: «Contractor_Phone_Number»
Contractor E-mail: «Contractor_Email»

IT IS AGREED AS FOLLOWS:

1. PURPOSE

The purpose of this contract is to provide high quality legal representation in the _____ Judicial District(s) (_____ County) for children, indigent parents, and other legal parties who are the subject of abuse or neglect proceedings or Family in Need of Court Ordered Services (FINCOS) proceedings, including proceedings for the termination of parental rights, adoption proceedings, or other abuse/neglect or FINCOS proceedings designated by the as defined by statute.

2. SCOPE OF WORK

A. The Contractor shall:

- 1) Provide services and otherwise do all things necessary for or incidental to the performance of work, as set forth in the attached Exhibit A1-A3, Statement of Work, which by this reference is incorporated. The legal services provided under this agreement shall be limited to attorney appointments under the legal authority of the AOC.

- 2) Timely provide accurate and complete invoices in compliance with the AOC's billing policies and procedures as set forth in the attached Exhibit B, Court-Appointed Attorney Billing and Payment Guidelines, (Billing Guidelines) which by this reference is incorporated. Contractor will remain in compliance with such throughout the Contract Period including amendments/revisions made thereto by the AOC during the Contract Period.
- 3) Immediately provide written notice to the AOC if Contractor is disciplined by the New Mexico Supreme Court Disciplinary Board (Disciplinary Board) for a violation of any rules of professional conduct. This includes any discipline, formal or informal, including an "Informal Admonition."

Contractor agrees that by entering into this Agreement, Contractor voluntarily waives any confidentiality regarding attorney discipline or disability proceedings pursuant to Subparagraph (2) of paragraph B of Rule 17-304 NMRA. Contractor understands that a copy of this waiver of confidentiality (contract provision) will be provided to Disciplinary Board.

- 4) By entering into this Agreement, Contractor voluntarily waives any confidentiality regarding substantiated investigations by the New Mexico Children Youth and Families Department regarding the Contractor.

3. **TERM**

This Agreement shall not become effective until approved by the AOC. The term of this agreement shall begin July 1, 2016, and shall terminate June 30, 2017, unless sooner terminated. Pursuant to NMSA 1978, Section 13-1-150(B) the Agreement may be extended for a total period not to exceed four (4) years, on a year-to-year basis. **Any extension of this contract is dependent upon the Contractor's compliance with the performance specifications and requirements detailed herein.**

4. **COMPENSATION**

Contractor must comply with the specific procedures set forth in the Billing Guidelines, attached as Exhibit B. The Billing Guidelines are also available on the court's website and hard copies are available upon request. By accepting this Agreement, Contractor agrees to comply with the Billing Guidelines.

A. Compensation Amount

Compensation for the Contractor's service shall be paid exclusively from funds appropriated to the AOC by the state legislature for the payment of court-appointed counsel.

The AOC shall compensate the Contractor for appropriately billed legitimate legal services as follows:

Hourly Rate

In-court	\$60 per hour
Out-of-court	\$60 per hour

In-court and out-of-court hours will be billed against a benchmark maximum dollar amount, or cap. Benchmark caps for Guardian ad Litem/Youth Attorney and Respondent Attorney are as follows:

Benchmark Compensation Caps for Guardian ad Litem/Youth Attorney

Petition to Adjudication	\$1,200
Disposition to First Permanency Hearing	\$1,500
Annually every year thereafter	\$900

Benchmark Compensation Caps for Respondent Attorney

Petition to Adjudication	\$1,500
Disposition to First Permanency Hearing	\$1,200
Annually every year thereafter	\$900

For example, the \$1,500 cap for a respondent attorney permits a **maximum** of 25 hours (\$1,500/\$60) to be billed for the time expended upon the segment of the case extending from the initial filing of the petition through adjudication.

If Contractor reaches the benchmark cap and circumstances warrant additional time and/or expenses that exceed the benchmark, Contractor shall submit a Request for Pre-Approval to the CAAF Office to receive authorization for future billing. The request should explain reasons for the amount of time required on the case. Further instructions and a sample

form are included in the Billing Guidelines and in paragraph 4(D) below.

B. Travel Reimbursement:

Contractor shall receive reimbursement for **authorized “assignment-related” travel** at the following rates:

Travel time	\$30 per hour
Mileage	0.46 per mile

Authorized actual travel time shall be reimbursed at a rate of \$30.00 per hour for travel that is “assignment-related” as defined in the general rules below. The mileage reimbursement is set at a rate established by the DFA

1) Travel To and From Court

Compensation applies to travel time after the first fifty (50) miles of all trips (confused about “all trips” – 1st 50 miles of travel per month are no reimbursed? example) to and from court, absent a waiver by the CAAF Office or AOC General Counsel based upon a compelling need for representation in a particular under-served court. This restriction applies to travel to and from court.

The fifty-mile exclusion of compensation for time is applicable to travel to and from court proceedings wherever conducted (e.g., courthouse, mental health facility, hospital).

2) Travel Expenses Related to Client Visits

Travel for client visits outside of court is compensable (\$30.00 per hour) even if the travel to visit the client does not exceed fifty (50) miles round-trip.

Travel time to and from the court to meet a client on the day of court proceedings is excluded from compensation.

3) Compensable “assignment-related travel” includes, but is not limited to, the following:

- a. travel to and from a court for court appearances, if the travel exceeds 50 miles;
- b. travel to and from client visits; and

- c. travel to and from other locations such as family team meetings, interview witnesses, investigate and research a case.

The threshold distance of fifty miles for all assignment-related travel (except client visits outside court) is measured from Contractor's nearest office OR his/her home to his/her destination, whichever distance is shorter.

C. EXPERT SERVICES:

In accordance with CAAF Office's Expert Services Policy, Contractor shall receive reimbursement for approved expert services paid by the Contractor or may forward expert services invoices to the AOC for direct payment to the service provider. To receive reimbursement, Contractor must provide a copy of the service provider's invoice.

D. EXTRAORDINARY COMPENSATION AND PROCEDURES:

The Contractor shall make application to the AOC for reimbursement of unusual expenses such as deposition costs, other investigatory expenses, out of state travel, before such expenses are incurred. Any claims for reimbursement of unusual or allowable expenses, (*See*, Section 32A-1-19A(3)), shall be included on a separate payment voucher that contains, in the narrative portion, an explanation and breakdown of the cost. The AOC may consult with the presiding judge to approve the application for payment. Reimbursement of expenses is contingent upon the availability of funds.

5. **BILLING PROCEDURES:**

The specific rules outlining billing are attached as Exhibit B, Billing Guidelines. The Billing Guidelines are also available on the court's website and hard copies are available upon request. By accepting this Agreement, Contractor agrees to be bound by said rules.

- A. AOC will pay Contractor upon receipt of properly completed invoices and documentation as required by the Billing Guidelines, **which shall be submitted to the AOC monthly**. The invoices and required documentation shall describe to the AOC's satisfaction, the work performed.
- B. Invoices and the required documentation shall be submitted to the CAAFF Manager, Administrative Office of the Courts, 237 Don Gaspar,

Room 25, Santa Fe, NM 87501, within ten (10) business days after the end of the month, according to the specifications outlined in the Billing Guidelines.

- C. Upon acceptance that the services have been received and accepted, payment shall be tendered to the Contractor, within thirty (30) days of the date the invoice is received by the AOC. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. The AOC shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein. If the AOC finds that the services are not acceptable, it shall provide the Contractor an explanation of the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action.
- D. No payments in advance or in anticipation of services to be provided under this Contract shall be made by the AOC.
- E. Payment is subject to the availability of funds pursuant to the Appropriations Paragraph set forth below. The final monthly invoice must be received by the AOC no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date will not be paid.
- F. The Contractor must fully cooperate with financial audits performed by the AOC and provide records supporting all billed activities and expense reimbursement(s) upon the AOC's request. Contractor agrees that the determination of whether a record supports the billed activity is solely AOC's, as determined at the sole discretion of the AOC. Contractor agrees that the AOC may withhold payment on any disputed activity until resolved in a manner satisfactory to AOC, as determined at the sole discretion of the AOC. Contractor agrees to reimburse the AOC for any fees paid that are unsupported by records, as determined at the sole discretion of AOC.

6. PERFORMANCE ASSESSMENT

In order to assess the effectiveness of representation, the AOC will conduct an annual assessment through objective evaluation survey instruments, contract review, case review, and courtroom observations of attorney practice.

- A. The Contractor will participate in the evaluation process as required by the AOC. The Contractor will cooperate with the AOC in efforts

to improve representation and monitor compliance of the New Mexico Supreme Court Performance Standards.

- B. All evaluations shall be performed in such a manner that will not unduly interfere with the Contractor's business or work hereunder.

7. TERMINATION

- A. This Agreement shall terminate at the end of the contract term. This Agreement may be sooner terminated without cause by any of the parties hereto upon written notice delivered to the other party at least 30 days prior to the intended date of termination, or pursuant to the Appropriations section, infra. By such termination, no party shall nullify obligations already incurred. For all cases appointed during any month for which the Contractor received compensation as set forth in the Compensation section, supra, the Contractor shall provide service through disposition even if disposition occurs after the termination of the contract period.
- B. Default by any party is cause for termination, provided that written notice is given the other party at least 14 days before such termination shall occur. Default is construed to include failing to provide the services or comply with the terms set forth herein.
- C. Upon termination, Contractor shall continue to represent his/her clients until substitute counsel enters an appearance. Contractor shall cooperate with substitute counsel to ensure that the client continues to be effectively represented. At a minimum, Contractor shall provide new counsel with a transfer memo that includes: contact information for the client and other providers in the case, the date and time of the next hearing in the case, and a short synopsis of events and issues in the case.

8. STATUS OF CONTRACTOR

- A. The Contractor and the Contractor's agents and employees are independent contractors performing professional services and are not employees of the State of New Mexico and shall not accrue leave, retirement, insurance, bonding, use of state vehicle, or receive benefits afforded to the employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The

Contractor agrees not to purport to bind the State of New Mexico to any obligations not assumed herein by the State of New Mexico, unless the Contractor has express authority to do so, and then only within the strict limits of that authority.

- B. The Contractor shall avoid employment that would be in conflict with the Contractor's duties under this agreement or give the appearance of impropriety.

9. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of the AOC.

10. USE OF ASSOCIATES

- A. Every attorney providing legal services compensable under this contract will have a contract with the AOC. The contract will be between the Contractor and the AOC. A Contractor may apply to the AOC to use associates within their firm to represent clients under this contract.
- B. A Contractor must submit an application that identifies the associate(s) the attorney intends to use and his/her qualifications to serve as an abuse and neglect attorney. The application is included in the Billing Guidelines.
- C. If the associate is determined by the AOC to be qualified, the attorney's contract will specifically identify the name of that associate and contain assurances by the Contractor that warrants that all associates meet the requirements of this Agreement and all attachments herein.
- D. The Contractor assumes responsibility for all work performed under this Agreement, including those cases that are delegated. Further, the Contractor assumes the entire responsibility for compensating the delegee from funds that the Contractor receives pursuant to this Agreement.
- E. If the Contractor violates this provision, the AOC may terminate the Agreement.

11. RECORDS, AUDIT, AND QUALITY ASSURANCE

- A. The Contractor shall maintain all files, pleadings and documents necessary for the competent representation of the client and keep

records that indicate the date, amount of time, and nature of service rendered for a period of three years (3) from the date of final payment under this Agreement.

- B. A compilation of such records shall be delivered to the AOC upon request. These records shall be subject to audit by the Department of Finance and Administration, the AOC, and the State Auditor. The AOC shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the AOC to recover excessive or illegal payments.
- C. Case files may be kept and/or archived by electronic means including encrypted internet storage, disk, or other media provided the means of storage is encrypted, housed in a secure, confidential location and the Contractor maintains a secure backup system.
- D. The Contractor agrees to participate in any quality assurance and accountability process approved by the AOC. Including the Performance Assessment described in Section 6 above.

12. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorizations for expenditures being made by the New Mexico Legislature for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the legislature, this Agreement shall, notwithstanding the provisions of any other paragraph, terminate on the Contractor's receipt of written notice of termination from the AOC. The AOC's decision of whether sufficient appropriations and authorizations for expenditures have been made shall be accepted by the Contractor and shall be final. If the AOC proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

13. RELEASE

The Contractor, upon final payment of the amount due under this Agreement, releases the AOC, its officers and employees, and the State of New Mexico from all liability, claims, and obligations arising from or under this Agreement.

14. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the AOC. This provision shall extend indefinitely beyond the terms of this Agreement.

15. PRODUCT OF SERVICES: COPYRIGHT

All material developed specifically by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the court not later than the termination date of this Agreement. No such material developed, in whole or in part, by the Contractor under this Agreement shall be subject of an application for copyright by or on behalf of the Contractor.

16. CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT

The Contractor warrants that the Contractor presently has no interest and shall not acquire any interests, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

17. PROHIBITION AGAINST DUAL COMPENSATION

The charges for services rendered under this Contract are reimbursable or subject to compensation only to the extent that such services relate exclusively and directly to the purpose of this Contract and supplemental or additional payment for such services is not received by the Contractor from any other source.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to

discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

19. PENALITIES FOR VIOLATION OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

20. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1(G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

21. WORKER'S COMPENSATION

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the AOC.

22. INDEMNIFICATION

The Contractor shall defend, indemnify and hold harmless the AOC and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, if acting within the scope of their employment and pursuant to this contract. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the General Counsel of the AOC by certified mail. As an independent contractor, Contractor is not

covered by or entitled to representation by the Risk Management Division of the New Mexico General Services Department.

23. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

24. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. MERGER

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings are merged into this written Agreement. No prior agreement of understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement.

26. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties to the Agreement and all other required signatories. If the AOC proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

27. **NOTICES**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the AOC: CAAFF Fund Manager
 237 Don Gaspar, Rm. 25
 Santa Fe, NM

To the Contractor: «Contractor»
 «Contractor_Address_1»
 «Contractor_Address_2»

28. **AUTHORITY**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

29. **EFFECTIVE DATE**

This Agreement is not effective until signed by all parties and is effective on the date specified in the Term section of this Agreement.

Signed by the parties on the dates indicated:

Administrative Office of the Courts

BY: _____ Date _____
Arthur Pepin, Director

Contractor

By signing this contract, I verify that I have malpractice insurance with the following carrier _____:

BY: _____ Date _____
«Contractor», Contractor

THE FOLLOWING IS NOT A PARTY TO THIS AGREEMENT

The records of the Taxation and Revenue Department reflect that the CONTRACTOR is registered for payment of the New Mexico gross receipts tax.

New Mexico Tax ID Number:

BY: _____ Date _____
Taxation and Revenue Department